

Applicant intends that the tool is not a positive element of the claimed invention, and refers the Examiner to the amended claims to illustrate this intention.

Rejection Under 35 U.S.C. §102

The Examiner rejected claims 1, 8 and 20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,500,257 to Mahan. In particular, the Examiner notes that Mahan shows an apparatus for holding a flashlight comprising an attachment member (20) adapted for frictionally holding an outer surface of a flashlight, which attachment member is defined by two flaps, and a grip member (22) that is integral to the attachment member.

The attachment member in Mahan is defined by two flaps that are attached, or secured to each other at both ends of the respective flaps. The flaps, or facings (26), have lace holes (12) allowing the flaps to be secured to each other by a lace (28). Because the two flaps are attached, or secured to each other at both ends of the respective flaps, the attachment member is less flexible than is Applicant's attachment member. Applicant's tab members 54 are separate and individual tab members 54 not attached or secured to each other at both ends, but instead have a slit 52 allowing the tab members 54 and attachment member 20 to expand in order to accommodate a tool. This is described in the specification, paragraph [0027], thus creating a novel and distinct relationship between the tabs and attachment member of Applicant's apparatus, and the flaps and attachment member of Mahan. Mahan does not contemplate an expandable holster.

Moreover, the grip member in Mahan is not similar to Applicant's grip. The grip member in Mahan is flexible, and therefore unsuited for the purpose of Applicant's grip 22. The grip, or straplike part 22 in Mahan, is designed to allow the Mahan holster to be

secured to a user's belt. *See*, Mahan, Col. 2, lines 3-6. Applicant's grip 22 is rigid and capable of supporting the weight of Applicant's apparatus, and a tool used with the apparatus. The structural differences between Applicant's grip 22 and Mahan's grip may best be illustrated by referring to the intended purpose for each. Applicant's grip 22 would be as equally unsuited for the purpose of Mahan's grip, as Mahan's grip is unsuited for the purpose of Applicant's grip 22. The respective grip structures are distinctly different.

Mahan does not teach all the elements of the Applicant's apparatus because the attachment member and the flaps in Mahan do not have the same structural relationship as the attachment member and tab members in Applicant's apparatus. Also, the grip member in Mahan is not capable of providing the same function as the grip in Applicant's apparatus.

The Examiner rejected claims 29 and 30 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,769,788 to Kellough. In particular, the Examiner notes that Kellough shows an apparatus with an attachment member that frictionally engages an outer surface of a flashlight, a grip surface defined as one end of the attachment member, and the flashlight being movable until it is secured within the attachment member, and the grip surface end of the attachment member being positioned in the mouth of a user.

The attachment member in Kellough is composed essentially of a tubular sleeve used as a flashlight holder (see, Figures 1 and 2), which requires the entire circumference of the device, and therefore the entire circumference of the flashlight, to be inserted into the user's mouth (see, Figure 3). The insertion of the entire circumference of the device and the flashlight is exactly a situation the Applicant's apparatus avoids.

Applicant's grip 22 is clearly defined in the figures (see, Figures 1-3) and the specification (see, paragraph [0031]) as having a circumference that is only a portion of the entire circumference of the attachment member, thereby allowing the user to support the tool, or flashlight, with the grip without having to insert the entire circumference of the apparatus, or the tool or flashlight, within the user's mouth (see, Figure 3). It may be noted that the fourth element of independent claim 29 reads in pertinent part that "the grip extends away from a first end of the flashlight in an axial direction," and similarly the second element of independent claim 20 reads in pertinent part "the grip extending away from a first end of the tool in a deployed position and between a second end and the first end of the tool in a stowed position." This claim language is supported in the specification in paragraph [0031].

Kellough does not anticipate claims 29 or 30 because the methods of use are different. Kellough requires that the entire circumference of the device, and the entire circumference of the flashlight, be inserted into the user's mouth. Applicant's apparatus allows the tool, or flashlight, to be supported and manipulated when only the grip 22 of the apparatus is placed in the user's mouth, wherein the grip 22 has a circumference that is only a portion of the entire circumference of the attachment member.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections based on Mahan and Kellough respectively, and thereby allows claims 1, 8, 20, 29 and 30.